IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.2061 OF 2006

Ramesh Bajirao Desai ...Appellant

vs.

Union of India ...Respondent

Mr.G.J.Mohanrao with Mr.Ashok Varma for the Appellant
Mr.Anand Samant for the Respondent

CORAM: A.S.OKA,J.
DATE : FEBRUARY 20,2007.

P.C.:

1. I have heard the submissions of the learned Advocates for the parties. I have perused the copies of the Claim Application, Reply, Affidavit of evidence and documents produced on record of the Trial Court. The claim petition filed by the Appellant under section 124-A of the Railways Act,1989 (hereinafter referred to as the said Act of 1989) has been dismissed by the Railway Claims Tribunal on the ground that the Appellant has not established that he was a bonafide passenger.

2. It is not in dispute that on 18th January 1999, the Appellant was travelling by a local train from Vasai Road to Diva. It is also not in dispute that when the train reached between Vasai Road and Kaman Road Railway station earth moving equipment doing the work of levelling the track crushed the compartment windows of the train as a result of which the Appellant sustained injury to his left elbow.

3. The case made out by the Appellant in his Claim Application is that at the relevant time he was holding a second class railway ticket from Vasai to Diva Railway Station which was lost in the accident. The case made out by him in the Affidavit of evidence is that as a result of injury, he sustained a major fracture with his left hand and he was transferred to Byculla railway hospital. It is his specific case that he became unconscious after the injury and he lost his wrist watch and railway ticket.

4. The Appellant has produced on record a certificate issued by the Medical Director of Central Railway hospital at Byculla. The said certificate does not disclose that the Appellant had become unconscious. In the Affidavit of examination in chief, the Appellant stated he lodged a complaint with the railway police about loss of his articles. Admittedly, a copy of the complaint was not produced by the Appellant and even the particulars of the complaint were not given by the Appellant.

5. The Appellant has stated that he was possessing a season ticket valid for journey between Vasai Road to Diva via Dadar. In fact he produced the same before the Court. Even according to the case of the Appellant the said railway pass and identity card were not stolen. He stated that instead of

travelling for Vasai to Diva via Dadar, sometimes he used to travel from Vasai directly to Diva by Vasai-Diva railway. He produced the season ticket valid for journey between Vasai to Diva via Dadar and an identity card. The Appellant came out with a specific case that he became unconscious as a result of injury sustained by him and he lost his wrist watch and railway ticket. The Appellant could not substantiate his case that he became unconscious. As per the record produced by the Appellant himself, he suffered fracture of lower third shaft of Humerus (Lt). None of the medical papers produced by the Appellant show that he became unconscious. No effort was made by the Appellant to lead evidence to show that he had filed a police complaint complaining about the loss of the wrist watch and ticket. Considering aforesaid aspects, the theory of loss of wrist watch and ticket appears to be extremely doubtful. Thus, the Appellant came out with a case which is not at all established and in fact the said case regarding loss of consciousness is proved to be false. Thus, there is no error in the finding recorded by the Railway Claims Tribunal that the Appellant was not a bonafide passenger.

6. I find no error in the view taken by the tribunal. First Appeal is dismissed with no order as to costs.

JUDGE